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OFFICE OF PETITIONS

In re Application of :
Iyer et al. : DECISION ON PETITION
Application No. 10/788,734 :
Filed: February 27, 2004 :
Attorney Docket No. EI7617 :
:

This is a decision on the petition filed June 11, 2004, requesting that the above-identified application be accorded a filing date of February 27, 2004.

On February 27, 2004, applicants deposited the above-identified application. However, on May 24, 2004, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Application" requiring drawings of applicants' invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification filed on February 27, 2004, described drawings containing Figures 1-2, but no drawings were filed on February 27, 2004.

On June 11, 2004, applicants filed the present petition and a \$130.00 petition fee, requesting that the above-identified application be accorded a filing date of February 27, 2004. Applicants admitted that the application was deposited without drawings on February 27, 2004. However, applicants asserted that the drawing Figures 1-2 did not add new matter to the application.

As stated in MPEP § 601.01(f), it is the practice of the United States Patent and Trademark Office (Office) to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

This application contains method claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification. In view of the above, the requirement for drawings as set forth in the "Notice of Incomplete Application" of May 24, 2004, was mailed in error and is hereby withdrawn.

The application will be accorded a filing date of February 27, 2004, because drawings were not necessary to obtain a filing date. Accordingly, the petition is **granted**. The application will be accorded a filing date of February 27, 2004, without any drawings.

The issue of new matter is a determination for the examiner. Applicants may wish to file an amendment requesting entry of Figures 1-2.

The \$130.00 petition fee is unnecessary and will be refunded by to Deposit Account No. 05-1372.

The Office of Initial Patent Examination is directed to accord the above-identified application a filing date of February 27, 2004, without any drawings, and to mail a corrected filing receipt.

Application No. 10/788,734

Page 3

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

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